

REMARKS

The present amendment is submitted in conjunction with a Request for Continued Examination (RCE) and in response to the final Office Action dated January 25, 2010, which set a three-month period for response. Filed herewith is a Request for a One-month Extension of Time, making this amendment due by May 25, 2010.

Claims 1-4 and 6 are pending in this application

In the final Office action, the drawings were objected to as not showing every feature of the invention specified in the claims, specifically, the "spring-elastic valve stem" of claims 1 and 2 and the "decorative elements" of claim 5. The specification was objected to on similar grounds. Claim 6 was objected to for an informality. Claims 1-6 were rejected under 35 U.S.C. 112, second paragraph, as being indefinite. Claim 1 was rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 3,096,002 to Focht in view of U.S. Patent No. 3,865,283 to Hayes. Claims 2-6 were rejected under 35 U.S.C. 103(a) as being unpatentable over Focht in view of Hayes and further in view of U.S. Patent No. 3,156,382 to Michell.

Turning first to the objection to the drawings, filed herewith are amended Figs. 1 and 3 which have been amended to show the "spring-elastic" feature of the valve stem 8 as defined in the independent claims. Claim 5 has been canceled.

Claim 6 was amended to correct the noted typographical error.

To more clearly define the present invention over the cited references, claims 1 and 2 were amended to define a "valve stem (8) supported by the valve plate (5)", as well as the "foam dispensing opening (7) seated directly on the valve stem (8)".

The clarifying language finds support in the specification in Figs. 1, 3, 5, 10 and 11, where the valve step (8) is shown within an opening of the valve plate (5). In addition, each of these figures shows a direct contact of the valve stem and the valve plate. Thus, these figures clearly show to the practitioner that the valve stem is supported by the valve plate (8).

The above amendments clarify further that the valve stem is part of the foam head. Thus, the feature in which the foam dispensing opening is seated directly in the valve stem is not indefinite under Section 112, second paragraph.

In Figs. 1 and 2, the resilient force of the "spring-elastic valve" has been added by schematic elements. In Fig. 1, the left and right elements show both the same resilient force (reflected by the same spring density). In Fig. 2, the valve is tilted such that the left element exerts a higher resilient force and the right element exerts a lower resilient force. This is reflected by the distinct spring densities in Fig. 2. Thus, the spring-elastic property and the effect of the spring when activating the valve are clarified.

The Applicants note further that Figs. 1 and 3 show the resilient effects of the valve stem. These effects are adapted to the function of the valve stem. The resilient properties close the container in case the valve is not activated and open the contained when the valve is tilted. The corresponding forces are relatively

high. According to the specification on page 2, lines 31-32, the same resilient properties restore the actuation button – and the foam head.

The recess 16 within the lower edge 15 of the lower portion 9 of the foam head provides a spring effect, since the lower edge can easily deform in the region of the recess, which is denoted as “forming an annular spring”, as defined in claims 1 and 2. The function is described on page 3, line 32 through page 4, line 1: “It is thus assured that the foam head 1 can be actuated and remains joined to the propellant container 2 and cannot fall off”.

In addition to this function, the elastic property provided by the recess softens the actuation of the foam head. Without this additional elastic property provided by the recess 16, the handling of the actuation button would be defined by the resilient force of the valve only (which is adapted to avoid any leakage), and would be linked with a steep spring characteristic. The additional spring provided by the recess according to the present invention stretches the overall spring characteristic for the actuation button leading to smoother actuation and greater handling comfort.

Therefore, the annular spring presses the outer rib 13 to the crimped edge in a horizontal direction. In contrast, the resilient properties of the valve stem are in a vertical direction and, consequently, are not adapted to keep the outer rib 13 in contact with the crimped edge.

With the amendments to the claims and figures, both spring-like elements are clearly distinguished with regard to function and exerted force. Furthermore, both spring-like elements are clearly distinguished with regard to the

corresponding mechanical component by which the spring-like elements are realized.

Turning next to the cited references, the Michell patent discloses an aerosol container with several mounting cups, which are mounted on top of the container. The cups do not comprise any outlet for providing aerosol. Rather, these cups have an opening through which a valve can extend (see column 1, lines 53-62). All of the figures in Michell show that the valve – and the valve head – are omitted. As a result, Michell does not show any details of a foam head as defined in amended claims 1 and 2. In particular, no contact elements or resilient elements for attaching a dispenser head to the container are shown. Thus, Michell neither shows an outer rib engaging an inner crimped edge of the container nor a lower edge having a recess and forming an annular spring.

In the Hayes reference, a dispenser cap is shown, which is applied on a valve. In Hayes, shoulders 54 extend along a complete circumference and, consequently, cannot provide a tilting movement for an actuation button diametrically opposite to an outer rib. Furthermore, Hayes neither discloses nor suggests using a foam head with a lower edge, in which a recess is provided for forming an annular spring which applies radial (horizontal) forces onto an inner crimped edge in order to retain the foam head.

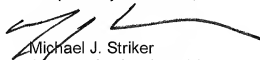
The Focht reference shows a dispensing head; however, this head does not comprise a lower edge having a recess for providing an annular (i.e., horizontal) spring for securing the head with an inner crimped edge of the

container. Therefore, Focht in combination with the other references does not render obvious the subject matter of the amended claims.

Therefore, the practitioner would not be led to the present invention by combining the references as proposed. It is respectfully submitted that since the prior art does not suggest the desirability of the claimed invention, such art cannot establish a prima facie case of obviousness as clearly set forth in MPEP section 2143.01. The mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggested the desirability of the modification. *In re Fritch*, 23 USPQ 2d 1780, 1783-84 (Fed. Cir. 1992).

The application in its amended state is believed to be in condition for allowance. Action to this end is courteously solicited. Should the Examiner have any further comments or suggestions, the undersigned would very much welcome a telephone call in order to discuss appropriate claim language that will place the application into condition for allowance.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'Michael J. Striker', is written over the typed name.

Michael J. Striker
Attorney for Applicant(s)
Reg. No. 27233
103 East Neck Road
Huntington, New York 11743
631-549-4700